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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/726,372      | 12/01/2000  | Hans-Rudolf Nageli   | ATM-2273            | 5299             |

7590

08/05/2003

Virgil H. Marsh  
Fisher, Christen & Sabol  
Suite 1401  
1725 K Street, N.W.  
Washington, DC 20006

EXAMINER

TSOY, ELENA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1762

DATE MAILED: 08/05/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/726,372

Applicant(s)

NAGELI ET AL.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 28-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 14, 2003 has been entered.

***Response to Amendment***

2. Amendment filed on July 14, 2003 has been entered. New claim 55 has been added. Claims 28-55 are pending in the application.

***Specification***

3. The amendment filed on November 26, 2002 stands objected to under 35 U.S.C. 132 as introducing new matter into the disclosure for the reasons of record as set forth in Paragraph No. 5 of the Office Action mailed on February 13, 2003 (Paper No. 9).

***Claim Objections***

4. Objection to claim 28 because of informalities has been withdrawn.
5. Claim 55 is objected to because of the following informalities: "coextruded0coated" in line 4 from the bottom seems to be incorrect. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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7. Claims 28-55 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A recitation "the temperature at the surface of the plastic coating (14) and the adhesion-promotion agent (16) lies *below* the crystallite melt point (Tk) of the plastic" in independent claim 28 is a new matter since it was not described in the specification as filed.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Rejection of claims 28-54 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. **Claims 28, 29, 51, 52** are rejected under 35 U.S.C. 102(b) as anticipated by Heyes et al (US 5,093,208) for the reasons of record as set forth in Paragraph No. 9 of the Office Action mailed on February 13, 2003 (Paper No. 9) since claim 55 is a substantial duplicate of the claim 28.

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12. **Claim 55** is rejected under 35 U.S.C. 102(b) as anticipated by Heyes et al (US 5,093,208).

Heyes et al disclose a process for production of an aluminum foil (See column 2, lines 15-24) coated with a (sealable and sterilizable) plastic based on polypropylene (PP) consisting of co-extruding the plastic with maleic anhydride (MAH) graft modified PP (an adhesion promoting agent) and combining co-extruded PP composite of Type I with the aluminum foil between two rollers (See Fig. 4; Table I, type H; column 3, line 35; column 8, lines 9-19), the temperature at the outer surface of the plastic lies below the (crystallite) melt point ( $T_k$ ) of the plastic (See column 3, lines 25, 46-47), then passing continuously the coated aluminum foil through a heater 10 (oven) to increase the adhesion strength between the aluminum foil and the plastic coating (See Fig. 1; column 7, lines 12-16) with a temperature set so that the temperature at the outer surface of the plastic lies above the (crystallite) melt point ( $T_k$ ) of the plastic (See column 3, lines 48-51), and quenching (cooling in a shock-like manner) the coated aluminum foil such that the crystalline plastic is converted to non-crystalline or amorphous form (i.e. crystalline proportion at least in the surface area of the cooled PP layer is as small as possible) (See column 1, lines 45-47; column 2, lines 1-15; column 3, lines 39).

It is the Examiner's position that the surface area of the cooled PP layer has claimed properties such that if the quenched non-crystalline plastic still has small amount of crystals, then the crystal grains are as small as possible *inherently* since it is produced by a method identical or substantially identical processes to that of claimed invention.

It is held that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical

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processes, claimed properties or functions are presumed to be inherent. See MPEP 2111.02, 2112.01. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 30-50, 53, 54** are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyes et al (US 5,093,208) in view of Takano et al (US 5,837,360) for the reasons of record as set forth in Paragraph No. 11 of the Office Action mailed on February 13, 2003 (Paper No. 9).

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in cursive script, appearing to read 'ETsoy'.

Elena Tsoy  
Examiner  
Art Unit 1762

August 1, 2003